

STATUS REPORT: CRIMINAL FINES

Since the beginning of FY 1997, the Division has obtained over \$1.5 billion dollars in criminal fines -- many multiples higher than the sum total of all criminal fines imposed for violations of the Sherman Antitrust Act dating back to 1890. Well over 90 percent of these fines were imposed in connection with the prosecution of international cartel activity.

- **Year-End Fines.** In the 10 years prior to FY 1997, the Division obtained, on average, \$29 million in criminal fines annually. In FY 1997, the Division collected \$205 million in criminal fines - - which was 500 percent higher than during any previous year in the Division's history. In FY 1998, the Division obtained over \$265 million in criminal fines. In FY 1999 (ending September 30, 1999), the Division secured over \$1.1 billion. (See Bar Chart of Antitrust Division Criminal Fines).
- **Higher Average Fines.** In FY 1991, the average corporate fine for an antitrust offense was a little less than \$320,000. In FY 1998, the average fine on corporations jumped to roughly \$12 million, a nearly *forty-fold* increase since FY 1991. The average corporate fine in FY 1999 was even higher still.
- **Higher Top-End Fines.** Six years ago, the largest corporate fine ever imposed for a single Sherman Act count was \$2 million. However, in the past two years, fines of \$10 million or more have become commonplace. The five largest fines obtained by the Division thus far are the \$100 million fine against Archer Daniels Midland (U.S. company) (October 1996), the \$110 million fine against UCAR International (U.S. company) (April 1998), the \$135 million fine against SGL Carbon AG (German company) (May 1999), the \$225 million fine against BASF AG (German company) (May 1999), and the \$500 million fine against F. Hoffman-La Roche (Swiss company) (May 1999).

International: Fines Of \$10 Million or More. The Division has obtained fines of \$10 million or more against U.S., Dutch, German, Japanese, Belgian, Swiss, British, and Norwegian -based companies. In 21 of the 26 instances in which the Division has secured a fine of \$10 million or greater, the corporate defendants were foreign-based. These numbers reflect the fact that the typical international cartel likely consists of a U.S. company and three or four of its competitors that are market leaders in Europe, Asia, and throughout the world. (See Chart of Sherman Act Violations Yielding a Fine of \$10 Million or More).

STATUS REPORT: CORPORATE LENIENCY PROGRAM

In August 1993, the Division revised its Corporate Leniency Program to make it easier and more attractive to companies to come forward and cooperate with the Division. Three major revisions were made to the program: (1) amnesty is automatic if there is no pre-existing investigation; (2) amnesty may still be available even if cooperation begins after the investigation is underway; and (3) all officers, directors, and employees who cooperate are protected from criminal prosecution. As a result of these changes, the Amnesty Program is the Division's most effective generator of international cartel cases, and it is the Department's most successful leniency program.

- **Application Rate.** The revised Corporate Amnesty Program has resulted in a surge in amnesty applications. Under the old amnesty policy the Division obtained roughly one amnesty application per year. Under the new policy, the application rate is closer to two per month. As a result of this increased interest, the Division frequently encounters situations where a company approaches the government within days, and in some cases less than one business day, after one of its co-conspirators has secured its position as first in line for amnesty. Of course, only the first company to qualify receives amnesty.
- **Case Generator.** In the last two years, cooperation from amnesty applications have resulted in nearly thirty convictions and over \$1 billion in fines. In fact, the majority of the Division's major international investigations have been advanced through the cooperation of an amnesty applicant.
- **Amnesty - A Corporate "Super Saver".** The vitamin, graphite electrodes, and marine construction investigations offer three prime examples of the stunning financial advantages for companies that take advantage of the Amnesty Program. In each of these matters, the amnesty applicant paid *zero* dollars in criminal fines.

Vitamins. In the vitamin investigation, the applicant's cooperation directly led to F. Hoffman-La Roche's and BASF's decision to plead guilty and pay fines of \$500 million and \$225 million, respectively.

Graphite Electrodes. In the graphite electrodes investigation, the next company in the door after the amnesty applicant paid a \$32.5 million fine, the third company in paid a \$110 million fine, and the last company to accept responsibility and plead guilty paid a \$135 million.

Marine Construction. In the marine construction investigation, a corporate co-conspirator agreed to plead guilty and cooperate with the government's investigation shortly after the investigation went overt based on information provided by the amnesty applicant. Though the company provided very valuable cooperation and received a significant reduction in its fine for that cooperation, it still paid a fine of \$49 million.

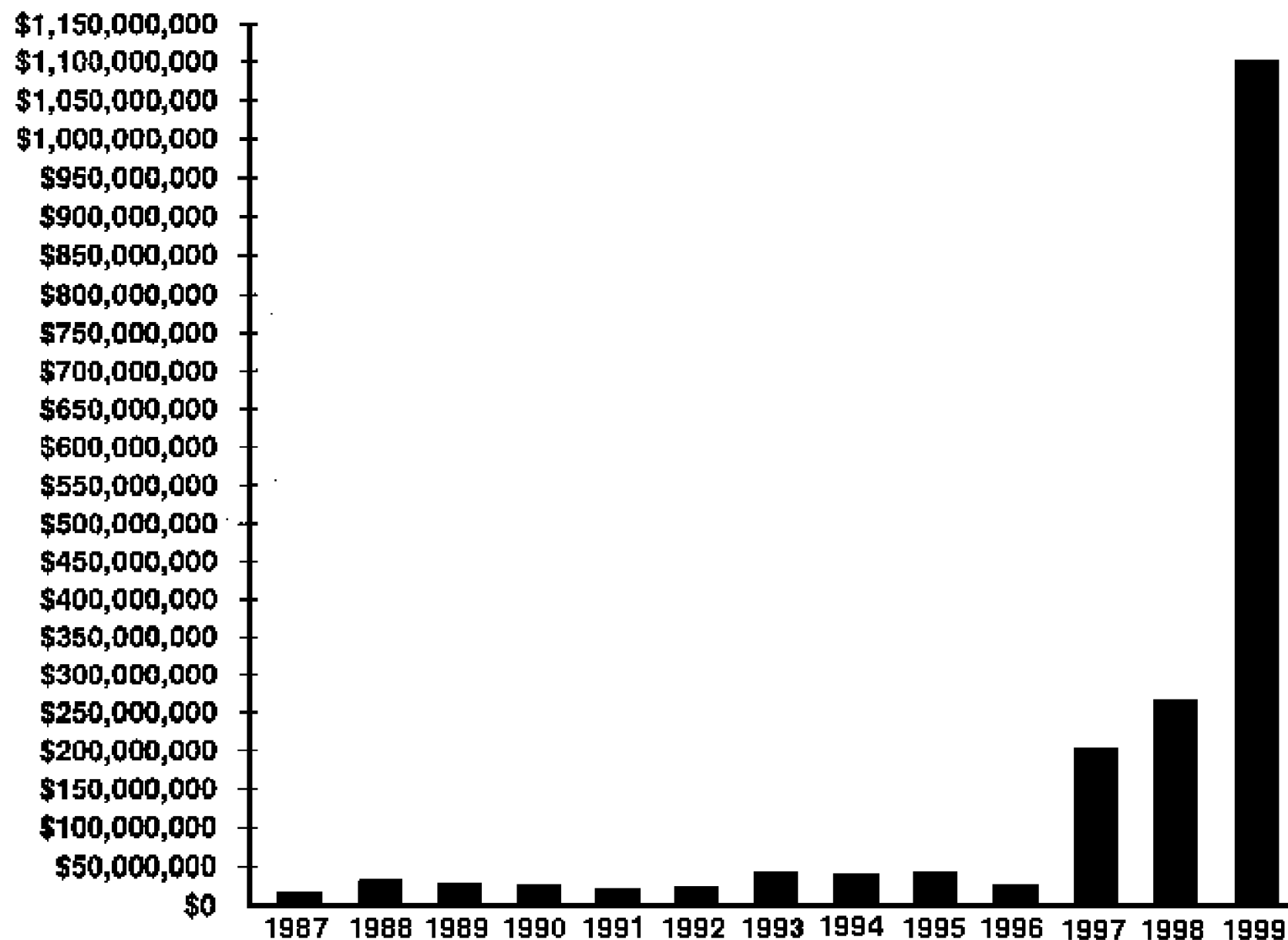
- **Amnesty Plus.** Of the more than 35 investigations of international cartel activity, approximately one-half were initiated by evidence obtained as a result of an investigation of a completely separate industry. For example, a new investigation results when a company approaches the Division to negotiate a plea agreement in a current investigation and then seeks to obtain more lenient treatment by offering to disclose the existence of a second, unrelated conspiracy. Under these circumstances, companies that chose to self report and cooperate in a second matter can obtain what we refer to as "Amnesty Plus. In such a case, the company will receive amnesty, pay zero dollars in fines for its participation in the second offense, and none of its officers, directors, and employees who cooperate will be prosecuted criminally in connection with that offense. Plus, the company will receive a substantial additional discount by the Division in calculating an appropriate fine for its participation in the first conspiracy.
- **Confidentiality Policy.** The Division's policy is to treat as confidential the identity of amnesty applicants and any information obtained from the applicant. Thus, the Division will not disclose an amnesty applicant's identity, absent prior disclosure by or agreement with the applicant, unless authorized by court order. In the three cases noted above -- vitamins, graphite electrodes, and marine construction -- the amnesty applicants issued press releases announcing their conditional acceptance into the corporate amnesty program thereby obviating the need to maintain their anonymity.

Locations of Cartel Meetings Affecting United States Commerce



ANTITRUST DIVISION CRIMINAL FINES

Criminal Fines



| <u>YEAR</u> | <u>FINES</u> |
|-------------|-----------------|
| 1987 | \$17,091,000 |
| 1988 | \$30,826,000 |
| 1989 | \$28,492,000 |
| 1990 | \$23,575,000 |
| 1991 | \$20,379,000 |
| 1992 | \$23,705,000 |
| 1993 | \$42,296,000 |
| 1994 | \$40,236,000 |
| 1995 | \$41,653,000 |
| 1996 | \$26,817,000 |
| 1997 | \$205,178,000 |
| 1998 | \$266,924,000 |
| 1999 | \$1,105,654,316 |

ANTITRUST DIVISION
Sherman Act Violations Yielding a Fine of \$10 Million or More

| Defendant (FY) | Product | Fine (\$ Millions) | Geographic Scope | Country |
|---|---------------------------|--------------------|------------------|------------------|
| F. Hoffman-La Roche Ltd. (1999) | Vitamins | \$500 | International | Switzerland |
| BASF AG (1999) | Vitamins | \$225 | International | Germany |
| SGL Carbon AG (1999) | Graphite Electrodes | \$135 | International | Germany |
| UCAR International, Inc. (1998) | Graphite Electrodes | \$110 | International | U.S. |
| Archer Daniels Midland Co. (1997) | Lysine & Citric Acid | \$100 | International | U.S. |
| Takeda Chemical Industries, Ltd (1999) | Vitamins | \$72 | International | Japan |
| Haarmann & Reimer Corp. (1997) | Citric Acid | \$50 | International | German Parent |
| HeereMac v.o.f. (1998) | Marine Construction | \$49 | International | Netherlands |
| Eisai Co., Ltd. (1999) | Vitamins | \$40 | International | Japan |
| Hoechst AG (1999) | Sorbates | \$36 | International | Germany |
| Showa Denko Carbon, Inc. (1998) | Graphite Electrodes | \$32.5 | International | Japan |
| Daiichi Pharmaceutical Co., Ltd. (1999) | Vitamins | \$25 | International | Japan |
| Nippon Gohsei (1999) | Sorbates | \$21 | International | Japan |
| Pfizer Inc. (1999) | Maltol/Sodium Erythorbate | \$20 | International | U.S. |
| Fujisawa Pharmaceuticals Co. (1998) | Sodium Gluconate | \$20 | International | Japan |
| Dockwise N.V. (1998) | Marine Transportation | \$15 | International | Belgium |
| Dyno Nobel (1996) | Explosives | \$15 | Domestic | Norwegian Parent |

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Sherman Act Violations Yielding a Fine of \$10 Million or More

| | | | | |
|---|------------------|--------|---------------|----------------|
| F. Hoffmann-LaRoche, Ltd. (1997) | Citric Acid | \$14 | International | Switzerland |
| Eastman Chemical Co. (1998) | Sorbates | \$11 | International | U.S. |
| Jungbunzlauer International (1997) | Citric Acid | \$11 | International | Switzerland |
| Lonza AG (1998) | Vitamins | \$10.5 | International | Switzerland |
| Akzo Nobel Chemicals, BV & Glucona, BV (1997) | Sodium Gluconate | \$10 | International | Netherlands |
| ICI Explosives (1996) | Explosives | \$10 | Domestic | British Parent |
| Mrs. Baird's Bakeries (1996) | Bread | \$10 | Domestic | U.S. |
| Ajinomoto (1996) | Lysine | \$10 | International | Japan |
| Kyowa Hakko Kogyo, Co., Ltd. (1996) | Lysine | \$10 | International | Japan |